IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.14 OF 2005
IN
NOTICE OF MOTION NO.1938 OF 1994
IN
TESTAMENTARY PETITION NO.545 OF 1992

Labhsingh Daya Singh ..Appellants

Vs.

Sardar Tarasingh Bhaisahib
Dittamal & Ors. ..Respondents.

Mr.P.K.Samdani i/b.M/s.Wadia Gandhy & Co., Advocate for the Appellants.

Mr.P.A.Sawant with Mr.D.R.Mehta i/b.M/s.D.Liladhar & Co., Advocates for the Respondents.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 17TH JANUARY, 2005

P.C. :

By consent, the Appeal is taken up for final hearing.

2. The Appellants/Petitioners have challenged the order of the learned single Judge in so far as the learned Judge stayed the above Testamentary Petition and the above Notice of Motion till the disposal of Suit no.1498 of 1997 filed by the Petitioners.

3. The above Testamentary Petition was filed by the Appellants for probate of the last Will and testament of one Sardar Darshan Singh Sahib Dittamal. The above Notice of Motion No.1938 of 1994 was taken out by the Respondents/Original Applicants for an order that a deed of family arrangement dated 15.4.1994 be taken on record in the above Petition and the same be ordered to be annexed to the record of the proceedings.

4. Under clause 21 of the alleged family arrangement, the Appellants are alleged to have agreed to withdraw the above Petition. The Applicants are alleged to have agreed to withdraw Probate Case No.21 of 1991 filed before the Delhi High Court and one Sardarni Surjit Kaur is alleged to have agreed to withdraw Suit No.2488 of 1992 filed by her before this Court and Appeal No.838 of 1992 filed therein, as settled out of Court by the said family arrangement. There are some of the terms in the alleged family arrangement.

5. Thus, the above Notice of Motion was filed for recording the family arrangement. The same was objected to by the Respondent/Petitioner. The fact and the validity of the alleged family arrangement

is disputed and is an issue in the above proceedings.

6. The Appellants, in view of the Respondents having set up the alleged family arrangement, filed Suit No.1498 of 1997 seeking a declaration that the same is void and/or voidable. Thereafter, by an order dated 13.2.1995 passed in an earlier Notice of Motion No.2706 of 1992 a learned single Judge had already directed that the above Notice of Motion should be disposed of first before considering the other Notices of Motion.

7. The leaned Single Judge, by the impugned order has stayed the above Notice of Motion and the Petition till the said Suit No.1498 of 1997 is decided. We see no justification for the same.

There is no impediment either in law or on the grounds of convenience in staying the above proceedings till the hearing and final disposal of the suit filed by the Appellants. If there are any common issues in the two proceedings, naturally, the findings in the former may govern or affect the findings in the later. To that extent, the parties in the suit, subject to any Appeal, may be governed

by the findings in the above proceedings. Further, the above Notice of Motion had already been adjourned to Court for recording evidence. These are proceedings of 1992/1994. The suit is of 1997. Before us there was no cogent reason as to why the above proceedings ought to be stayed pending the hearing of the said suit. The Respondents cannot possibly be prejudiced as, by virtue of the order dated 13.2.1995, the above Notice of Motion taken out by them has been directed to be heard first. The Respondents will have full opportunity of establishing their case.

8. In the circumstances, the impugned order is set aside and the above proceedings shall continue in accordance with law. There shall be no order as to costs.